



February 11, 2019

TO: Republican Members

FROM: Republican Committee Staff

RE: Hearing entitled “Strengthening Our Health Care System: Legislation to Reverse ACA Sabotage and Ensure Pre-Existing Conditions Protections”

I. INTRODUCTION

The Subcommittee on Health will hold a hearing on Wednesday, February 13, 2019, at 10:30 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Strengthening Our Health Care System: Legislation to Reverse ACA Sabotage and Ensure Pre-Existing Conditions Protections.”

II. REPUBLICAN WITNESS

- Grace-Marie Turner, President, Galen Institute

III. BACKGROUND

President Donald J. Trump has taken several administrative actions to enhance state innovation waivers, increase patient choice, and more efficiently utilize tax resources. Together, these deregulatory reforms to expand consumer options will generate \$450 billion in benefits to Americans over the next decade, according to the Council of Economic Advisors (CEA).¹

1332 Waivers for State Innovation

Section 1332 of the Patient Protection and Affordable Care Act (PPACA) established Waivers for State Innovation beginning January 1, 2017.² These waivers give the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury the discretion to grant states new flexibility within their health care markets as long as the model provides coverage that is as comprehensive, affordable, covers a comparable number of residents, and is budget neutral to the federal government. If approved, the state may receive funding equal to the amount of forgone federal financial assistance that would have been provided to its residents pursuant to specified PPACA programs, known as pass-through funding. An approved waiver can remain in place for five years and can be renewed.

¹ The Council of Economic Advisors. “Deregulating Health Insurance Markets: Value to Market Participants.” February 2019. <https://www.whitehouse.gov/wp-content/uploads/2019/02/Deregulating-Health-Insurance-Markets-FINAL.pdf>.

² P.L. 111-148, as amended by P.L. 111-152

The secretaries are authorized to waive several provisions under their respective jurisdictions:

- Part I of Subtitle D of Title I of PPACA (relating to establishing qualified health plans (QHPs));
- Part II of Subtitle D of Title I of PPACA (relating to consumer choices and insurance competition through health insurance marketplaces);
- Sections 36B of the Internal Revenue Code and 1402 of the PPACA (relating to premium tax credits and cost-sharing reductions for plans offered within the marketplaces);
- Section 4980H of the Internal Revenue Code (relating to employer shared responsibility); and
- Section 5000A of the Internal Revenue Code (relating to individual shared responsibility).

The Obama Administration's 1332 waiver guidance made it very difficult for any state using HealthCare.gov to participate, stating:

[u]ntil further guidance is issued, the Federal platform cannot accommodate different rules for different states. For example, waivers that would require changes to the calculation of Exchange financial assistance, non-standard enrollment period determinations, customized plan management review options, or changes to the design used to display plan options are generally not feasible at this time due to operational limitations.³

Moreover, the previous guidance:

. . . would not take into account changes to Medicaid or CHIP that require separate Federal approval, such as changes in coverage or Federal Medicaid or CHIP spending that would result from a proposed Section 1115 demonstration Savings accrued under either proposed or current Section 1115 Medicaid or CHIP demonstrations are not factored into the assessment of whether a proposed State Innovation Waiver meets the deficit neutrality requirement.⁴

In an effort to improve state innovation, the Trump Administration issued revised guidance⁵ and model waivers for expedited review and approval, a concept previously used for

³ Centers for Medicare and Medicaid Services; U.S. Department of Health and Human Services, U.S. Department of Treasury. "Waivers for State Innovation." December 16, 2015.

<https://www.federalregister.gov/documents/2015/12/16/2015-31563/waivers-for-state-innovation>.

⁴ Centers for Medicare and Medicaid Services; U.S. Department of Health and Human Services, U.S. Department of Treasury. "Waivers for State Innovation." December 16, 2015.

<https://www.federalregister.gov/documents/2015/12/16/2015-31563/waivers-for-state-innovation>.

⁵ 31 CFR Part 33, 45 CFR Part 155

state reimbursement during the Medicare Part D transition⁶ and for assistance to Hurricane Katrina evacuees enrolled in Medicaid.⁷ The updated guidance focused on loosening restrictions limiting state flexibility and consumer choice, and providing flexibility for states to meet the legislative authority standard. More specifically, the modernized guidance centers on the availability of comprehensive and affordable coverage, expands the definition of coverage to include short-term plans, and clarifies that existing state legislation providing statutory authority to enforce PPACA may satisfy the requirement that each state enact a law to apply for and receive a 1332 waiver.

To date, eight states have active waivers, all of which were approved under the Obama Administration guidance.⁸

Outreach and Education

PPACA established the Navigator program and enrollment education to provide guidance to enrollees, inform consumers of Open Enrollment Periods, and notify potential enrollees about ways to sign up for coverage. On August 31, 2017, the Center for Consumer Information and Insurance Oversight (CCIIO) announced changes to both programs.⁹

For plan year 2017, Navigators received a total of \$62.5 million in grants and enrolled 81,426 individuals,¹⁰ which accounted for fewer than one percent of total enrollees. According to this same report, 17 Navigators enrolled less than 100 people, costing taxpayers \$5,000 per enrollee. For this reason, Navigator grantees received funding for plan year 2018 based on their ability to reach enrollment goals for the previous year.

The Centers for Medicare and Medicaid Services (CMS) allocated \$10 million to outreach and education for plan year 2018, consistent with promotional spending levels on Medicare Advantage and Medicare Part D. While CMS devoted more than \$100 million to

⁶ Centers for Medicare and Medicaid Services. "State Reimbursement for Medicare Part D Transition." January 24, 2006. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2006-Fact-sheets-items/2006-01-24.html>.

⁷ Centers for Medicare and Medicaid Services. "Disaster Relief for Hurricane Katrina Evacuees in Texas." September 15, 2005. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2005-Fact-sheets-items/2005-09-15.html>.

⁸ Center for Consumer Information and Insurance Oversight. "Section 1332: State Innovation Waivers." https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers-.html#Section%201332%20State%20Application%20Waiver%20Applications.

⁹ Center for Consumer Information and Insurance Oversight. "Policies Related to the Navigator Program and Enrollment Education for the Upcoming Enrollment Period." August 31, 2017. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf>.

¹⁰ Centers for Medicare and Medicaid Services. "CMS Announcement on ACA Navigator Program and Promotion for Upcoming Open Enrollment." August 31, 2017. <https://www.cms.gov/newsroom/press-releases/cms-announcement-aca-navigator-program-and-promotion-upcoming-open-enrollment>.

outreach and education for plan year 2017, or roughly twice as much as for plan year 2015, first-time enrollment numbers declined by 42 percent.¹¹

According to CMS, for plan year 2019, the Trump Administration “...sent over 700 million reminder emails and text messages to consumers, as well as 3.2 million outreach emails to help Navigators, agents, and brokers assist consumers.”¹²

Short-Term, Limited-Duration Insurance

In coordination with the Department of Labor and the Department of the Treasury, HHS revised the Obama Administration regulations limiting short-term, limited-duration insurance (STLDI) from 12-months to three months by allowing the plans to be available to consumers for up to 364 days and renewable up to 36 months.¹³

The Trump Administration regulation aims to provide relief from rising premiums and expand access affordable health care plans. According to CMS, “[i]n the fourth quarter of 2016, a short-term, limited-duration policy cost approximately \$124 a month compared to \$393 for an unsubsidized ACA-compliant plan.”¹⁴ The Administration projected roughly 100,000 to 200,000 individuals would move from PPACA-compliant plans to STLDI. These more affordable plans may be attractive options for individuals who are between jobs, cannot afford PPACA coverage, or cannot continue to see their doctor because they are out of network.

IV. ISSUES

The Democrats noticed four bills for this legislative hearing:

- [H.R. 986](#), Protecting Americans with Preexisting Conditions Act of 2019, authored by Rep. Ann M. Kuster (D-NH);
- [H.R. 987](#), Marketing and Outreach Restoration to Empower Health Education Act of 2019, authored by Rep. Lisa Blunt Rochester (D-DE);
- [H.R. 1010](#), To provide that the rule entitled “Short-Term, Limited Duration Insurance” shall have no force or effect, authored by Rep. Kathy Castor (D-FL); and,
- Draft authored by Health Subcommittee Chairwoman Anna G. Eshoo (D-CA).

¹¹ Centers for Medicare and Medicaid Services. “CMS Announcement on ACA Navigator Program and Promotion for Upcoming Open Enrollment.” August 31, 2017. <https://www.cms.gov/newsroom/press-releases/cms-announcement-aca-navigator-program-and-promotion-upcoming-open-enrollment>.

¹² Centers for Medicare and Medicaid Services. “CMS Releases Final Snapshot for the 2019 Federal Exchange Open Enrollment Period.” January 3, 2019. <https://www.cms.gov/newsroom/press-releases/cms-releases-final-snapshot-2019-federal-exchange-open-enrollment-period>.

¹³ 26 CFR Part 54, 29 CFR Part 2590, 45 CFR Parts 144, 146, and 148

¹⁴ Centers for Medicare and Medicaid Services. “Fact Sheet: Short-Term, Limited-Duration Insurance Proposed Rule.” February 20, 2018. <https://www.cms.gov/newsroom/fact-sheets/fact-sheet-short-term-limited-duration-insurance-proposed-rule>.

V. REPUBLICAN STAFF CONTACTS

If you have any questions regarding this hearing, please contact Adam Buckalew or Caleb Graff of the Republican Committee staff at (202) 225-3461.